IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DANNY E. GARRETT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 05-0068-CV-W-ODS
	)	
BALL METAL BEVERAGE CONTAINER CORP., et al.,	)	
	)	
	)	
Defendants.	)	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

Pending is Plaintiff's Motion to Remand (Doc. # 6). For the following reasons, the motion is granted, and the case is remanded to the Circuit Court for Jackson County, Missouri.

I. BACKGROUND

This case originated in state court on December 1, 2004. Plaintiff is a citizen of Missouri. Defendant Ball Metal Beverage Container Corporation ("Ball Metal") is a Colorado corporation. Defendant Robert C. Turner is a citizen of Missouri. Thus, on the face of the pleadings, there is no diversity of citizenship.

According to Plaintiff's Petition, Defendants discriminated against him on the basis of his race in violation of the Missouri Human Rights Act ("MHRA"). Defendant Ball Metal removed the case on January 20, 2005. The Notice of Removal advanced Defendant's theory that Defendant Turner had been fraudulently joined. On January 23, 2005, Plaintiff filed his Motion to Remand.

II. STANDARD

In order to have jurisdiction, the Court must conclude that Defendant Turner was fraudulently joined. Conversely, if he was not fraudulently joined, the case must be

remanded. The Eighth Circuit has recently articulated the fraudulent joinder standard:

> Where applicable state precedent precludes the existence of a cause of action against a defendant, joinder is fraudulent. "[I]t is well established that if it is *clear* under governing state law that the complaint does not state a cause of action against the non-diverse defendant, the joinder is fraudulent and federal jurisdiction of the case should be retained." Iowa Pub. Serv. Co. v. Med. Bow Coal Co., 556 F.2d 400, 406 (8th Cir. 1977) (emphasis added). However, if there is a "colorable" cause of action - that is, if the state law *might* impose liability on the resident defendant under the facts alleged - then there is no fraudulent joinder. See Foslip Pharm., Inc. v. Metabolife Int'l, Inc., 92 F. Supp.2d 891, 903 (N.D. Iowa 2000).

Filla v. Norfolk S. Ry. Co., 336 F.3d 806, 810 (8th Cir. 2003) (internal footnote omitted). "[J]oinder is fraudulent when there exists no reasonable basis in fact and law supporting a claim against the resident defendants." Wiles v. Capitol Indem. Corp., 280 F.3d 868, 871 (8th Cir. 2002). If there is a reasonable basis in fact and law that supports the claim, joinder is not fraudulent. Filla, 336 F.3d at 810.

In conducting this inquiry, the Court must "resolve all facts and ambiguities in the current controlling substantive law in the plaintiff's favor," but the Court has "no responsibility to *definitively* settle the ambiguous question of state law." Id. at 811 (citations omitted) (emphasis in original). "Instead, the court must simply determine whether there is a reasonable basis for predicting that the state's law *might* impose liability against the defendant." Id. (emphasis added). Where the sufficiency of the complaint against the non-diverse defendant is questionable, "the better practice is for the federal court not to decide the doubtful question in connection with a motion to remand but simply to remand the case and leave the question for the state courts to decide." Id. (quoting Iowa Pub. Serv. Co., 556 F.2d at 406). The party seeking removal and opposing remand has the burden of demonstrating that federal jurisdiction exists. In re Bus. Men's Assurance Co. of Am., 992 F.2d 181, 183 (8th Cir. 1995) (per curiam) (citing Bor-Son Bldg. Corp. v. Heller, 572 F.2d 174, 181 n.13 (8th Cir. 1978)).

III. DISCUSSION

Defendant Turner is the plant manager for Defendant Ball Metal and is the decision-maker for the company with regard to the decisions complained of in the

petition. Pl.'s Pet. ¶ 9. Ball Metal contends that Defendant Turner was fraudulently joined because the MHRA does not subject individuals to liability. According to the MHRA, "'employer' includes. . . any person employing six or more persons within the state, and *any person directly acting in the interest of an employer*. . . ." Mo. Rev. Stat. § 213.010(7) (emphasis added). The Missouri Supreme Court has not addressed whether a supervisor, manager or other employee may constitute an employer and, therefore, subject to individual liability under the MHRA.

Ball Metal contends that Lenhardt v. Basic Institute of Technology, Inc., 55 F.3d 377 (8th Cir. 1995), is controlling on this issue. In Lenhardt, the Eighth Circuit faced the same issue this Court faces: whether the Missouri Supreme Court would hold that an individual officer or employee can be held liable as an employer under the MHRA. The Eighth Circuit determined that the Missouri Supreme Court would interpret the MHRA in a manner consistent with analogous federal decisions regarding employment discrimination laws (specifically, Title VII) and predicted that the Missouri Supreme Court would hold that the MHRA does not subject employees to individual liability. Id. at 379-80. However, Lenhardt is merely a prediction,[1] and it has not been followed by Missouri state courts.[2]

Recently, the Eighth Circuit held that the Family and Medical Leave Act (FMLA) imposes individual liability on supervisors. Darby v. Bratch, 287 F.3d 673, 681 (8th Cir. 2002). The FMLA defines "employer" to include "any person who acts, directly or

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[1] The Missouri Supreme Court has not always followed the "predictions" of the Eighth Circuit. See e.g., Kenney v. Hereford Concrete Prods. Inc., 611 S.W.2d 622, 624-25 (Mo. banc 1995) (rejecting the Eighth Circuit's conclusion that the scope of Title VII and the MHRA as to discriminatory retaliation were identical).

[2] In fact, both the Honorable Stephen N. Limbaugh, Sr., United States District Court Judge for the Eastern District of Missouri, and the Honorable Sarah W. Hays, United States Magistrate Judge for the Western District of Missouri, questioned the continued application of Lenhardt and concluded that a reasonable basis existed for predicting that the Missouri Supreme Court might impose individual liability against a management employee under the MHRA. Hill v. Ford Motor Co., 324 F. Supp.2d 1028, 1031 (E.D. Mo. 2004); Shortey v. U.S. Bank, N.A., Case No. 03-0530-CV-W-SWH (Doc. # 13).

indirectly, in the interest of an employer to any of the employees of such employer." 29 U.S.C. § 2611(4)(A)(ii)(I). The Court held "[i]f an individual meets the definition of employer as defined by the FMLA, then that person should be subject to liability in his individual capacity." Darby, 287 F.3d at 681. The definition of "employer" under the FMLA is more similar to the definition of "employer" in the MHRA than the definition of "employer" under Title VII.[3] It is not unreasonable to assume that the Missouri Supreme Court might find that the similarities between the FMLA and MHRA are persuasive and conclude that individuals may be liable under the MHRA.

Upon review of these cases and the relevant statute, the Court concludes that there is a reasonable basis for predicting that the Missouri Supreme Court might impose liability on an individual under the MHRA. The Court is satisfied that if Plaintiff's allegations are proved, he has alleged an arguable claim against Defendant Turner and, therefore, was not fraudulently joined. It may ultimately be determined that Plaintiff's theory of recovery is not viable or that he is unable to prove his claims; however, these possibilities are not relevant under the present inquiry. Ball Metal has not demonstrated that federal jurisdiction exists, and the case must be remanded.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Remand is granted, and the case is remanded to the Circuit Court for Jackson County, Missouri.

IT IS SO ORDERED.

DATE: February 24, 2005

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

[3] Title VII defines "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and *any agent of such person*. . . ." 42 U.S.C. § 2000e(b) (emphasis added).